UNITED NATIONS

CCPR

International Covenant on Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1501
22 December 1997

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1501st MEETING

Held at Headquarters, New York,
on Thursday, 4 April 1996, at 3 p.m.

Chairman: Mr. AGUILAR

CONTENTS

GENERAL COMMENTS OF THE COMMITTEE (continued)

Draft general comment on article 25 of the Covenant (continued)

ORGANIZATIONAL AND OTHER MATTERS

CLOSURE OF THE SESSION

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

96-80501 (E)

The meeting was called to order at 3.35 p.m.

GENERAL COMMENTS OF THE COMMITTEE (continued)

Draft general comment on article 25 of the Covenant (continued)
(CCPR/C/56/CRP.1)

Paragraph 2 (continued)

1. Mrs. EVATT, speaking on behalf of the Working Group on Article 40 of the Covenant, proposed that the last two sentences of the paragraph should be retained, but that the first two should be amended on the basis of the discussion at the previous meeting to read: "The rights under article 25 are related to, but distinct from, the right of peoples tc self-determination. By virtue of that right, protected by article 1 (1), peoples freely determine their political status and enjoy the right to choose the form of their constitution or government."

2. Paragraph 2, as amended, was adopted.

Paragraph 3

3. Mr. BRUNI CELLI, referring to the penultimate sentence, said that while it was a problem distinctions between citizens by birth and naturalized citizens were made in many countries, and it was too strong to say that any distinction was incompatible with article 25.

4. The CHAIRMAN, speaking in his personal capacity, said that he, too, thought the wording went too far. Particularly in the Western hemisphere, many countries had a republican form of government in which, for instance, the head of State could not be a naturalized citizen.

5. Mr. LALLAH, supported by Mr. BÁN, Mr. BRUNI CELLI and Ms. MEDINA QUIROGA, proposed that the statement should be softened by replacing the phrase "are not compatible with article 25" by the phrase "may raise questions of compatibility with article 25".

6. Mr. BÁN, supported by Mr. LALLAH and Mr. ANDO, said that the Committee should give clear guidelines, and therefore the phrase "In principle," should be deleted from the beginning of that sentence.

7. Paragraph 3, as amended, was adopted.

Paragraph 3b

8. Paragraph 3b was adopted with a minor drafting change.

Paragraph 4

9. Mr. ANDO suggested adding the phrase "in the conduct of public affairs" after the words "the right to participate", in the last sentence of the paragraph.

10. Mr. BRUNI CELLI, supported by the CHAIRMAN, speaking in his personal capacity, said that the conduct of public affairs included more than the exercise of the legislative, executive and administrative powers referred to in the second sentence. Therefore, a broader reference simply to the "powers of the State" would perhaps be preferable.

11. Mr. LALLAH said that the choice of those divisions had been the subject of much debate both within the Working Group and elsewhere. Paragraph 4 was merely introductory to what followed in paragraphs 5, 6 and 7. The Working Group's intention in paragraph 4 had been precisely to separate the political, specifically governmental, powers from the other powers of the State, such as the judicial power and others.

12. Mrs. EVATT proposed adding the words "in particular" before the phrase "the exercise of legislative, executive and administrative powers", to bring out that distinction.

13. Paragraph 4, as amended, was adopted.

Paragraph 5

14. Mr. BRUNI CELLI, supported by Mr. KLEIN, said that the statement in the fourth sentence that local government might give citizens more opportunities than central government to participate directly should be deleted: it did not belong in that paragraph, which was an analysis of what constituted direct participation.

15. Mr. ANDO proposed inserting the article "the" before the word "power" in the penultimate sentence.

16. Mrs. EVATT proposed changing the order of words in the last sentence to make it clearer: the phrase "between citizens as regards their participation" should be placed after the verb "made". Also the brackets around the clause "or decide public issues" in the third sentence should be removed, because it could be an important element in direct participation in countries which referred significant public issues to the process of referendum.

17. Paragraph 5, as amended, was adopted.

Paragraph 6

18. Mr. ANDO asked what precisely was meant by representatives exercising "real" governmental power, as stated in the first sentence.

19. Mr. LALLAH said that the Working Group had meant to distinguish true governmental power from merely consultative power as under a dictatorship.

20. Mrs. EVATT proposed deleting the word "real" before the words "governmental power" and inserting the words "do in fact" before the word "exercise".

21. Paragraph 6, as amended, was adopted.

Paragraph 7

22. Mr. BRUNI CELLI noted that citizens exerted influence on the conduct of public affairs not simply through debate and dialogue with their representatives, but also by organizing themselves into like-minded pressure groups in many areas that were not necessarily political. That should be reflected in the first sentence of the paragraph. The old concept of intermediate units between the citizen and the State was an important one in societies where there was a distribution of power.

23. Ms. MEDINA QUIROGA, supported by Mr. BRUNI CELLI and Mrs. EVATT, proposed inserting the phrase "or through their capacity to organize themselves" at the end of the first sentence.

24. Paragraph 7, as amended, was adopted.

Paragraph 8

25. Mr. ANDO said that the placement of paragraph 8 was awkward since it related rather to article 25 (a) of the Covenant than to article 25 (b). It should either be deleted or placed just before paragraph 4.

26. Mr. EL-SHAFEI said that he thought the placement was very logical: paragraphs 4 to 7 dealt with the forms of participation in the conduct of public affairs. Paragraph 8 then stated that the reports of States parties should describe how such participation occurred.

27. Mr. PRADO VALLEJO said that it was not clear in the Spanish text what was meant by "public powers and functions".

28. Mrs. CHANET said that the paragraph made no sense at all in French.

29. Mr. KLEIN noted that the paragraph added little to the text.

30. Mrs. EVATT said that she agreed with Mr. El-Shafei but that, since the paragraph did not add much, especially in translation, she would propose deleting it and renumbering all subsequent paragraphs accordingly.

31. Paragraph 8 was deleted.

Paragraph 9

32. Mr. LALLAH pointed out that the word "subparagraph" in the last sentence should be changed to "paragraph".

33. Mrs. CHANET, supported by Mr. ANDO, Mr. LALLAH and Mrs. EVATT, said that the reference in the second sentence to "genuine periodic elections" - which

reflected the wording of the Covenant - meant that elections should be held regularly. However, the use of the word "periodically" in the third sentence seemed to imply that elections should be held from time to time, or whenever a State so decided; it should therefore be deleted.

34. Paragraph 9, as amended, was adopted.

35. Mr. ANDO, supported by Mrs. EVATT, proposed that the words "It would be unreasonable" in the third sentence should be replaced with "It is unreasonable".

36. Mr. BÁN, supported by Mr. LALLAH, Mr. KLEIN and Mrs. EVATT, said that the second sentence should be deleted, since it repeated the formula concerning non-discrimination which already appeared in paragraph 3.

37. Mr. LALLAH proposed that the words "should be established by law" in the first sentence should be replaced with "must be established by law".

38. Paragraph 10 as orally amended, was adopted.

Paragraph 11

39. Mr. BRUNI CELLI, supported by Mrs. EVATT, Mr. ANDO and Mrs. CHANET, said that the word "unreasonable" in the second sentence was out of place and should be deleted and the sentence rephrased accordingly.

40. Mr. ANDO, replying to a question from Ms. MEDINA QUIROGA, said that the second sentence would read, "Where registration of voters is required, it should be facilitated and obstacles to registration should not be imposed".

41. Mrs. EVATT explained that square brackets had been placed around words in the draft which the Committee had not previously discussed or whose location in the text had been changed. She hoped that the Committee would, in all cases, agree to retain the words in brackets and to delete the brackets themselves.

42. Mr. LALLAH said that he agreed that the words in brackets should be retained in paragraph 11. He felt that the paragraph was too long, and suggested that it should be divided into two paragraphs, the second of which would begin with the words "Freedom of expression", in the sixth sentence.

43. Mrs. CHANET suggested that the fourth sentence should be amended to read, "Any improper interference with registration, the electoral process or voting, as well as any intimidation or coercion of voters, should be prohibited by penal laws".

44. Mrs. EVATT agreed with that proposal, but said that the words "and those laws should be strictly enforced" should be retained at the end of the sentence.

45. Paragraph 11 as orally amended, was adopted.

Paragraph 12

46. Mrs. CHANET, supported by Mr. PRADO VALLEJO, said that it was unnecessary to request States to describe their electoral laws, which were sometimes very complex. The Committee's real concern in that regard was whether a State's electoral laws provided for the adequate representation of voters.

47. Mr. KLEIN, supported by Mrs. EVATT, said that he agreed that the words "electoral laws, including the" should be deleted from the first sentence.

48. Mr. LALLAH asked whether the entire paragraph could be deleted, since the draft contained another paragraph in which the Committee asked States to describe their electoral system.

49. Mrs. EVATT said that she was willing to delete the reference to electoral laws as such, but that it was important to retain the reference to the exercise of the right to vote.

50. Paragraph 12, as orally amended, was adopted.

Paragraph 12b

51. Mr. PRADO VALLEJO, said that the wording of the first sentence implied that it was acceptable for States to deprive citizens of the right to vote. The sentence should be redrafted to emphasize that depriving citizens of the right to vote was unacceptable under almost any circumstances and that suspension of that right under penal laws must be fully warranted by the nature of the offence.

52. Ms. MEDINA QUIROGA proposed that the sentence be reworded to read: "In their reports, States should indicate and explain the legal provisions which would deprive citizens of the right to vote".

53. Mrs. EVATT welcomed that proposal.

54. Paragraph 12b as orally amended, was adopted,

Paragraph 13

55. Mrs. CHANET, supported by Mr. ANDO, said that the paragraph should include a statement like the one in paragraph 12b, to the effect that if conviction of an offence was a basis for suspending the right to stand for election, the period of such suspension should be proportionate to the offence and the sentence. That would indicate that it was unacceptable for States to use minor convictions, such as traffic violations, as an excuse for depriving citizens of the right to stand for election.

56. Mrs. EVATT suggested that the proposal should be inserted after the fourth sentence and that the rest of the paragraph, beginning with the words "Conditions relating to", should become a new paragraph. In addition, the words in square brackets should be retained and the brackets should be deleted.

57. Paragraph 13, as orally amended, was adopted.

Paragraph 14

58. Mr. EL-SHAFEI asked whether the words "or of specific parties" at the end of the first sentence could be deleted, since they did not seem to reflect the practice of any State party to the Covenant.

59. Mrs. EVATT said that, although it was true that the phrase in question did not apply to most States, it should be retained because a few States did require candidates for elective office to be members of specific parties. She also asked that the words in brackets should be retained, since they provided a useful clarification.

60. Paragraph 14, as orally amended, was adopted.

Paragraph 15

61. Mrs. CHANET said that paragraph 15 was unnecessary, since the points it raised were already covered in paragraphs 11, 13 and 14.

62. Mrs. EVATT said that the second sentence of paragraph 15 dealt with an important idea that had not been expressly stated elsewhere; namely, that candidates for public office and elected representatives should not be subject to constraints other than justifiable legal ones.

63. Mr. ANDO said that paragraph 15 should be retained because it concerned the right to stand for election, whereas paragraph 11 covered only the right to vote.

64. Mrs. CHANET said that, in her view, the reference to the electoral process in paragraph 11 covered the entire process, including election campaigns. Since campaigns normally preceded elections, it was illogical to place the paragraph on candidates' rights after the one on the electoral process. Moreover, the issue of non-discrimination in elections was adequately covered by other paragraphs in the draft.

65. Mrs. EVATT said that while the first sentence should be deleted, the idea expressed in the second sentence went beyond the issue of discrimination in the electoral process, and should be retained. Accordingly, she suggested that the second sentence should be reworded and inserted in another paragraph.

66. Mrs. CHANET said that the sentence was still unnecessary, since it concerned the same group of people referred to in paragraph 13.

67. Mr. KLEIN said that the need to protect people from disadvantages based on their candidacy for public office was a new idea. He proposed that the words "No person should suffer disadvantage of any kind because of their candidacy" should appear as a new sentence after the third sentence of paragraph 13.

68. Paragraph 15 as orally amended, was adopted.

Paragraph 16

69. Paragraph 16 was adopted.

Paragraph 17

70. Mr. BRUNI CELLI said that the absence of limitations on expenditure affected not only the freedom of elections but also the principle of representation. Powerful groups which were often linked to organized crime were able to influence the outcome of elections and compromise candidates and parties by making disproportionate campaign contributions to them. He therefore proposed that the words "and the nature of representation" should be inserted after the words "free choice of voters" in the penultimate sentence of the paragraph.

71. Mr. PRADO VALLEJO said that the problem alluded to by Mr. Bruni Celli was particularly widespread in Latin America, where election campaigns were often funded by drug cartels. The Committee's draft general comment should address the problem.

72. Mr. BHAGWATI agreed that there was need for limits to be placed on campaign expenditure. In his own region of South-East Asia, disproportionate expenditure by certain candidates and parties in effect subverted the democratic process.

73. Mrs. EVATT, while supporting Mr. Bruni Celli's proposed amendment, suggested that the words "or the democratic process distorted" should also be added after the word "undermined" in the penultimate sentence of the paragraph.

74. Paragraph 17, as amended, was adopted.

Paragraph 18

75. Mr. BRUNI CELLI observed that the Spanish rendering "junta electoral" for the English expression "electoral authority" was inaccurate, particularly since the word "junta" in Spanish had such sinister connotations.

76. Mr. ANDO questioned the wisdom of requiring that votes should be counted in the presence of the candidates or their agents in order to guarantee the security of ballot boxes. In some States, it might simply be impossible to fulfil that requirement at all times.

77. Mr. LALLAH pointed out that, in its discussions, the Working Group had agreed that members of the public should be present during the counting of votes, but had limited the requirement to candidates or their agents, whose presence was absolutely essential in order to ensure the transparency of the counting process.

78. Mr. BÁN agreed with Mr. Ando that the requirement was perhaps too sweeping. He would prefer a more general formulation such as: "Votes should be counted in a way which prevents any manipulation of the results".

79. Mr. BHAGWATI, supported by Mr. POCAR, said that the integrity of the electoral process required that votes be counted in the presence of the candidates or their agents.

80. Mrs. EVATT suggested that the sentence might state instead that candidates or their agents had the right to be present during the counting of the votes.

81. Mr. PRADO VALLEJO said that he had reservations about the use of the phrase "el caráter privado del processo electoral" ("the privacy of the voting process") inasmuch as article 25 of the Covenant provided only that elections should be held "by secret ballot".

82. Mr. LALLAH said that there was no way in which to avoid the use of the phrase "the privacy of the voting process" in English except by repeating the words "by secret ballot".

83. Ms. MEDINA QUIROGA said that it was possible to redraft the text in Spanish without repetition.

84. Mrs. EVATT suggested that the English text might be amended to read: "States must take measures to guarantee the requirements for elections to be held by secret ballot".

85. The CHAIRMAN said that the amendments proposed by Mrs. Evatt appeared to be generally acceptable.

86. Paragraph 18, as amended, was adopted.

Paragraph 19

87. Paragraph 19 was adopted.

Paragraph 20

88. Paragraph 20 was adopted.

ORGANIZATIONAL AND OTHER MATTERS

89. Mr. TISTOUNET (Secretary of the Committee) said that appointments had been arranged between the Bureau and the following States: Albania, Angola, Australia, Barbados, Bolivia, Central African Republic, Congo, Croatia, Democratic People's Republic of Korea, Equatorial Guinea, France, the Gambia, Grenada, Guyana, Israel, Jamaica, Kenya, Lebanon, Lithuania, Madagascar, Mali, Nicaragua, Panama, Philippines, Rwanda, Saint Vincent and the Grenadines, San Marino, Sudan, Suriname, Syrian Arab Republic, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Zaire and Zimbabwe. He was pleased to announce that the Bureau had just received the reports of Bolivia and France.

90. The CHAIRMAN said that the Committee would gratefully accept the offers from Mr. Buergenthal, Ms. Medina Quiroga and Mr. Klein to prepare draft general comments on articles 2, 3 and 12, respectively, of the Covenant.

CLOSURE OF THE SESSION

91. After the customary exchange of courtesies, the CHAIRMAN declared the fifty-sixth session closed.

The meeting rose at 5.25 p.m.